

accumulation. Now there may be various reasons for allowing quantities of rubber to accumulate and one of them may be to sell at a time when rubber is fetching a good price. On examining Ex.P3 one finds that at least since July 1953 scrap rubber was disposed by Lilford Estate at least once every two months; Ex. P3 also shows that at no time since October 1952 has scrap rubber been sold at a higher price than in August 1955 when the rate per pikul was \$65. For these reasons again it is reasonable to presume that the rubber in question was not the result of accumulation.

For the above reasons I hold that the prosecution has adduced sufficient evidence of circumstances which raise a reasonable suspicion that the rubber was unlawfully obtained and that the learned President was right in calling upon the appellant to make his defence; there was no evidence sufficient to satisfy the Court that he was lawfully in possession of the rubber and he was rightly convicted.

The appeal must be dismissed.

Appeal dismissed.

Solicitors: *Lovelace & Hastings.*

LEE LIAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) August 7, 1956]

[Ipoh — Criminal Appeal No. 34 of 1956]

Criminal Procedure Code (Cap. 6), s. 113(i) — Identification parade proceedings — Evidence — Inadmissible — Whether s. 157 of the Evidence Ordinance, 1950 varies the absolute prohibition contained in subsection (i) of s. 113 of the Criminal Procedure Code.

Evidence of identification parade proceedings are statements made to the Police during the course of Police investigation and are therefore inadmissible by virtue of subsection (i) of section 113 of the Criminal Procedure Code (Cap. 6).

Section 157 of the Evidence Ordinance, 1950, does not vary the absolute prohibition contained in subsection (i) of section 113 of the Criminal Procedure Code (Cap. 6).

[Editorial Note: Section 113(i) of the Criminal Procedure Code (Cap. 6) corresponds to section 121(1) of the Colony Criminal Procedure Code; and section 156 of the Evidence Ordinance, 1950, corresponds to section 157 of the Colony Evidence Ordinance.]

Cases referred to:—

- (1) *Harendra Nath v. R.* A.I.R. 1925 Cal. 161.
- (2) *Krishna Kahar v. R.* A.I.R. 1940 Cal. 182.
- (3) *Krishnachandra Dienki v. R.* I.L.R. 1935 Cal. 918, 919.
- (4) *Lala Lalung v. R.* A.I.R. 1939 Cal. 176.
- (5) *Nagina v. R.* A.I.R. 1921 All. 215.
- (6) *Sawar Khan v. R.* 1920 A.I.R. Pat. 334.
- (7) *Ramadhim Brahmin v. R.* A.I.R. 1929 Nag. 36.

(8) *In re Kshatri Ram Singh & Ors.* A.I.R. 1941 Mad. 675.

(9) *Mor Mahomud v. R.* A.I.R. 1940 Sind 168, 172.

(10) *Wee Boo Soh v. R.* (1947) M.L.J. 93.

(11) *R. v. Akbar Badoo* I.L.R. 34 Bom. 599.

MAGISTRATE'S CRIMINAL APPEAL.

B. K. Das for the appellant.

Abdul Aziz (Federal Counsel) for the respondent.

Thomson J.: — This is an appeal from the Magistrate's Court at Taiping.

The three appellants were tried on a charge that on 28th January, 1956, they committed house trespass in order voluntarily to cause hurt to certain persons in contravention of section 451 of the Penal Code. Each of them was convicted and sentenced to six months imprisonment. Against these convictions and sentences they have all now appealed.

The case for the prosecution was that during the morning of 28th January there was some sort of altercation in Taiping town between the complainant's son and the first appellant and that that evening the first appellant, accompanied by the second and third appellants, came to the complainant's house at Windsor Estate and entered it and caused hurt to her and her two sons.

The defence of the first appellant was that he went alone to the complainant's house on the evening in question "to ask her why her son had assaulted me" in Taiping that morning. An altercation ensued outside the house in which the complainant and her children attacked him and in the course of which he defended himself.

The defence of the second and third appellants, who are apparently the brothers of the first appellant, was that they were not present at the incident and indeed at the time were attending a wedding feast at Ayer Tawar some considerable distance from the scene.

As regards the first appellant I have only to say that there was ample evidence, if it was believed, to justify his conviction and that I can see no reason for differing from the view of that evidence taken by the learned Magistrate. His appeal against conviction is accordingly dismissed and I see no reason to quarrel with the sentence imposed upon him which, to my mind, was a very suitable one.

With regard to the other two appellants, however, it has been argued that their convictions were vitiated by the admission against them of certain evidence which should not have been admitted and this argument calls for careful consideration.

It would appear from the evidence that prior to the incident in question, which took place after dark and when only a small lamp was burning, these two appellants were not known to the complainant or any of the members of the family.

At the trial the first prosecution witness was a Police Corporal who gave evidence that the First Report of the alleged offence was made on 29th January 1956, that is the following day. That Report mentions the names of three Chinese. One of these names might well be that of the first appellant but it is difficult to see any connection between the other two names and those of the second and third appellants.

The second prosecution witness was a police Inspector who said that on 15th March, 1956, that is some six weeks after the First Report, he conducted an identification parade at Taiping Police Station at which were present two Chinese who, although known to him by names different from those appearing on the Charge Sheet, were in fact the second and third appellants. The material portions of his evidence read as follows :—

"I called Teng Sek Giew, a female to pick out the persons who had gone to the house. She identified Wong Ing Soon and Ooi Ing Chai as the persons who accompanied one Wong Ah Yeu who entered her house I then called Goh Eng Lay. He picked out Ooi Ing Chai as the person who entered his house on the night in question. I then called Kor Eng Choo Kor Eng Choo identified both the two men, Wong Ing Soon and Ooi Ing Chai as the persons who entered his house and to have chased him out of the house I called Koh Eng How. He identified Ooi Ing Chai as one of the persons who accompanied a male Chinese who came to the house."

All the persons mentioned as having identified one or both of the appellants were subsequently called as prosecution witnesses.

For the appellants it was submitted that the acts and words of the witnesses at this identification parade were statements to a Police Officer made in the course of a police investigation and were therefore inadmissible by reason of section 113(i) of the Criminal Procedure Code. It was also submitted that this evidence amounted to hearsay evidence and as such was inadmissible but I think there is little substance in this argument because the statements were probably admissible by way of corroboration of the witnesses' evidence by reason of section 157 of the Evidence Ordinance.

In India there has been considerable controversy as to whether, and if so to what extent, evidence of proceedings at a police identification parade is struck at by section 162 of the Indian Criminal Procedure Code which corresponds to section 113 of our Code.

First I take the Calcutta cases on the point.

In the cases of *Harendra Nath v. R.*⁽¹⁾ and *Krishna Kahar v. R.*⁽²⁾ it was held that evidence of what happened at police identification parades was inadmissible.

In the case of *Krishnachandra Dienki v. R.*⁽³⁾ it was sought to corroborate the evidence of the complainant by the fact that she had identified the accused at a test identification parade by the Police and Ghose J. said :—

"Whatever it may be, the statement, express or implied, which the girl must have made by way of identifying the petitioner at the thana, is hit by the provisions of section 162 of the Criminal Procedure Code" though Henderson J. was apparently of the opinion that the evidence of the identification might have been admissible under section 157 of the Evidence Act.

On the other hand, in the case of *Lala Lalung v. R.*⁽⁴⁾, the Court held that evidence by a witness that he had identified the accused to two Police Officers at his village was admissible but it was pointed out that what was admitted was not the statement of the witness to the Police Officers but the fact that he had identified the accused to them at the village.

In Allahabad in the case of *Nagina v. R.*⁽⁵⁾ it was held that evidence of proceedings at an identification parade held in the gaol could not be used as substantive evidence and were admissible, if at all, only by way of corroboration under section 157 of the Evidence Act when the identifying witnesses had themselves been called.

In Patna in the case of *Sawar Khan v. R.*⁽⁶⁾ it was held that evidence of an identification parade might be admissible by way of corroboration under section 157 of the Evidence Act.

In Nagpur in the case of *Ramadhim Brahmin v. R.*⁽⁷⁾ evidence of the fact of identification at a police identification parade was held admissible on the ground that it did not relate to any statement made to the police but was a simple exposition of a fact or circumstance which was witnessed.

In Madras in the case of *In re Kshatri Ram Singh & Ors.*⁽⁸⁾ it was held that section 162 of the Criminal Procedure Code excluded any evidence about statements made by witnesses at police identification parades but the fact that witnesses identified persons at parades held by the police might be proved.

Finally, in Sind in the case of *Mor Mahomud v. R.*⁽⁹⁾ the Court was concerned with the evidence of a tracker who had said that during a police investigation he recognised certain tracks as those of a particular person and in the course of their judgment the Court said :—

"A witness may say in Court what he saw or did during a police investigation. What he saw or did is not what he said and it is what he said that is excluded by

section 162, Criminal Procedure Code, statements and not acts, subject always to the proviso that the acts are not clearly to be construed as answers to questions such as the placing of a hand upon an accused in answer to the question of the Sub-Inspector to a witness as to which of the persons present is the accused."

To my mind, it is not an unfair summary of the position in India to say that although there is controversy as to the admissibility of the fact of identification at a police identification parade there is considerable unanimity to the effect that statements made in the course of such a parade are inadmissible by reason of section 162 of the Indian Criminal Procedure Code and that in this connection statements must be construed as including actions such as pointing out a person in response to questions.

In the present case I do not think it is necessary for me to express any opinion as to the admissibility of the fact of identification for the evidence in question here is clearly evidence of statements and on this I would not merely follow but would express my agreement with the Indian decisions which have been quoted to the effect that such statements are inadmissible.

I am not impressed by the argument that in some circumstances such statements may be admissible by reason of section 157 of the Evidence Ordinance. The Evidence Ordinance is a general code relating to evidence in all classes of cases. The Criminal Procedure Code relates only to criminal cases. In relation to such cases section 113(i) contains an absolute prohibition of the use as evidence of statements to the police in the course of police investigation except in the circumstances which the section itself sets out and in relation to criminal cases this prohibition must clearly override the general provision of section 157 of the Evidence Ordinance. Section 113(iii) of the Criminal Procedure Code expressly excludes from the prohibition contained in section 113(i) statements falling within sections 27 and 32(i) of the Evidence Ordinance and if it had been intended to extend this exemption to other sections of the Evidence Ordinance presumably the legislature would have said so.

In support of this view I would quote the following passage from the judgment of Murray-Aynsley C.J., in the Singapore case of *Wee Boo Soh v. R.*⁽¹⁰⁾ :—

"In the course of the hearing an officer of the Police gave evidence of statements made by the witness apparently to corroborate the evidence within the meaning of section 157 of the Evidence Ordinance. But I think in criminal matters the use of this section is subject to the restrictions of section 124 of the Criminal Procedure Code. To be admissible such statements must be made either at or about the time when the fact took place or before any authority legally competent to investigate. Here the statements were not made at or about the time when the events took place. They must, to be admissible, have been made in the course of an investigation. They were not admissible under section 117 Criminal Procedure Code. Therefore they fall within the prohibition of section 124 Criminal Procedure Code. If authority is needed for this it is to be found in *Emperor v. Akbar Badoo*⁽¹¹⁾."

Section 124 of the Straits Code is the same as section 113 of the Federation Code and section 117 of the Straits Code corresponds to section 107 of the Federation Code.

It follows from what I have said that the evidence of the Police Inspector as to what occurred at the identification parade held at Taiping on 15th March should not have been admitted. As regards the second and third appellants the whole case turned on the question of their identity and I am not prepared to say that had the evidence in question been excluded as it should have been the learned Magistrate would have come to the conclusion that they were guilty. Their appeals are therefore allowed and their convictions quashed.

I would add that so far as I am aware this question of whether evidence of identification parade proceedings is struck at by section 113(i) of the Criminal Procedure Code has not been previously considered in this country. I am also aware that in the past such evidence has been frequently admitted, in fact, I have admitted it myself. In the circumstances, I am prepared if asked to do so to give the necessary certificate for the point to be taken further.

Order accordingly.

Solicitors: *Das & Co.*

INDO-AUSTRALIAN TRADING CO. LTD. v. HIN ANN HUAY KUAN & ORS.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.)
and Knight J.) May 17, 1955]

[Singapore — Civil Appeal No. 27 of 1954]

Landlord and Tenant—Control of Rent Ordinance, 1953—Claim for possession—Registered Society—Capacity to hold tenancy—Whether protected by the Control of Rent Ordinance—Societies Ordinance (Cap. 217), s. 28.

This was an appeal from the decision of Taylor J. reported in (1954) M.L.J. 245 where the learned Judge held that the purported grant of tenancy in this case to the first respondents, an unincorporated body but a registered society, by its name, operated as an agreement to grant a tenancy to trustees on behalf of the society.

Held: (1) the purported grant of tenancy to the society was inoperative; (2) the Control of Rent Ordinance should not be strained to give protection to those not within its terms; (3) therefore in this case the appellants were entitled to terminate the arrangement permitting the society to use the premises in return for the payment of rent.

[Editorial Note: The Control of Rent Ordinance, 1953, and the Societies Ordinance, Cap. 217 of the 1936 Revised Edition, are now Chapters 242 and 228 respectively of the Laws of the Colony of Singapore, Edition of 1955.]